

HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF ISSAQUAH, a municipal
corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Defendants.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited liability
company,

Third-Party Plaintiffs,

v.

TERRA TALUS LLC, a Washington limited
liability company; ELEMENT RESIDENTIAL
INC., a Washington corporation; JOSHUA
FREED, an individual; J.R. HAYES & SONS,
INC., a Washington corporation; TERRA
ASSOCIATES, INC., a Washington
corporation; TALUS MANAGEMENT
SERVICES LLC, a Washington limited
liability company; and TALUS 7&8, LLC, a
Washington limited liability company,

Third-Party Defendants.

NO. 18-CV-00910 RSM

STIPULATED MOTION AND ORDER TO
CONTINUE DISCOVERY RELATED
DEADLINES

STIPULATED MOTION AND ORDER TO CONTINUE
DISCOVERY RELATED DEADLINES - 1

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TALUS 7&8 INVESTMENT, LLC, a
Washington limited liability company; J.R.
HAYES & SONS, INC., a Washington
corporation,

Fourth-Party Plaintiffs,

v.

KULCHIN FOUNDATION DRILLING
COMPANY, a Washington corporation, and
BIG MOUNTAIN ENTERPRISE LLC, a
Washington limited liability company,

Fourth-Party Defendants.

AND RELATED COUNTERCLAIMS AND
CROSSCLAIMS

I. RELIEF REQUESTED

Pursuant to LCR 16(b)(6), the Parties, by and through their respective counsel, jointly move the Court to continue the discovery related deadlines by approximately 30 days and to issue a new case schedule as outlined herein. In May of 2020, the Parties jointly requested, and the Court granted, a five-month continuance of the trial date and related deadlines. Dkt. No. 102. This Stipulated Motion represents the Parties' request for a short continuance of the discovery related deadlines. Good cause supports this request for a continuance.

II. BACKGROUND FACTS

The instant litigation arises out of a November 2015 landslide on a section of real property, commonly referred to as Talus Parcel 9, located in Issaquah, Washington. The cause of the landslide, as well as the nature and extent of the alleged resulting damage, is complicated and disputed.

The City of Issaquah (the "City") initiated a lawsuit in June 2018 in King County Superior Court against the owners of Talus Parcel 9 for damage to the City's infrastructure and water facilities caused by the landslide. The property owner removed the action to federal court, asserted

1 counterclaims against the City, and impleaded other parties alleging they are at fault for the City's
2 damages, if any, as well as the property owner's damages. Two of these third-party defendants,
3 in turn, impleaded two subcontractors. The parties have collectively asserted at least 30 claims,
4 counterclaims, and crossclaims amongst one another. The case involves 10 parties, represented
5 by over 20 lawyers from 13 law firms.

6 Discovery in this action is ongoing and extensive. To date, the Parties have produced over
7 80,000 documents, including dense construction project files and complicated engineering records.
8 Most of the parties have just recently substantially completed their respective document
9 productions and are still waiting on responsive third-party documents. As this Court knows, a
10 number of parties' written discovery and document productions were significantly delayed during
11 the coronavirus pandemic and stay-at-home order in the State.

12 Since the date of filing the Parties' second Stipulated Motion and [Proposed] Order to
13 Continue Trial Date and Related Deadlines (Dkt. 101), the Parties have conducted approximately
14 20 fact depositions and participated in a second mediation with Chris Soelling on October 13,
15 2020. On October 16, 2020, the Parties agreed to scheduling an additional 29 fact depositions to
16 occur this month through mid-December. The Parties are in the process of obtaining availability
17 from their respective clients and third-party witnesses. Thus, despite the Parties' efforts, the
18 current November 11, 2020, lay discovery deadline is proving unrealistic for the aforementioned
19 reasons.

20 Additionally, the Parties expect at least 14 expert depositions will occur after the fact
21 witnesses. Expert analysis and subsequent reports cannot be finalized until the Parties complete
22 the fact witness depositions. The experts will rely upon written documentation and fact witness
23 deposition testimony. The Parties anticipate each expert will require a substantial amount of time
24 to complete their analysis and issue written reports. Each expert will need to review the reports of
25 other experts in order to develop any rebuttal reports per the Federal Rules. All of these activities
26 must occur before each expert sits for a deposition. As with the fact witnesses, the Parties

1 anticipate each expert deposition will last a full day.

2 The Parties have fully cooperated in developing and proceeding with discovery. However,
3 despite significant effort and cooperation, and as a result of the COVID-19 pandemic, the Parties
4 cannot accomplish the fact witness depositions and expert discovery under the current case
5 schedule.

6 Counsel have diligently collaborated on discovery, including deposition scheduling. The
7 Parties concur that a minimal continuance of approximately 30 days of the discovery related
8 deadlines would allow the Parties to efficiently complete discovery and properly prepare for trial.

9 III. AUTHORITY AND ARGUMENT

10 LCR 16(b)(6) binds the Parties to the Court's scheduling order after the Parties submit a
11 Joint Status Report. LCR 16 authorizes the Parties to move the Court to amend or modify the case
12 schedule upon a showing of good cause.

13 Due to the number of parties and number of counsel at different law firms, the complexity
14 of the facts and issues involved in the case, the number of remaining fact witness depositions that
15 the Parties will hold (some of which may be taken out of state), the number of expert witness
16 depositions still to be scheduled, and, of course, the extensive delay that has resulted due to the
17 pandemic, the Parties agree that a continuance of the discovery related deadlines is necessary. The
18 Parties are cooperating in good faith to complete the anticipated discovery in a timely and efficient
19 manner. The Parties have held several teleconferences to discuss written discovery and document
20 productions as well as scheduling depositions; the Parties continue to communicate collectively
21 and cooperatively regarding these issues.

22 The Parties, therefore, request the Court continue the discovery related deadlines as
23 follows:

24 **Motions related to discovery filing deadline**

25 Current deadline: October 14, 2020

26 Requested deadline: November 16, 2020

Lay discovery completed by

Current deadline: November 11, 2020

Requested deadline: December 11, 2020

Expert Disclosures pursuant to FRCP 26(a)(2)

Current deadline: December 16, 2020

Requested deadline: January 15, 2021

Service of Expert Rebuttal Reports pursuant to FRCP 26(a)(2)

Current deadline: January 20, 2021

Requested deadline: February 19, 2021

Commencement of expert depositions

Current deadline: February 16, 2021

Requested deadline: March 15, 2021

Expert discovery completed by

Current deadline: April 5, 2021

Requested deadline: May 5, 2021

All dispositive motions and motions challenging experts must be filed by

Current deadline: April 19, 2021

Requested deadline: May 19, 2021

Mediation Per LCR 39.1(c), if requested by the parties, held no later than

Current deadline: May 5, 2021

Requested deadline: May 26, 2021

**All motions *in limine* must be filed by and noted on the motion calendar no later than
the THIRD Friday thereafter**

Current deadline: June 8, 2021

Requested deadline: June 8, 2021

Agreed pretrial order due

Current deadline: June 30, 2021

Requested deadline: June 30, 2021

Trial briefs, proposed *voir dire* questions, jury instructions, neutral statement of the case, and trial exhibits due

Current deadline: July 6, 2021

Requested deadline: July 6, 2021

Jury trial date

Current deadline: July 26, 2021

Requested deadline: July 26, 2021

IV. CONCLUSION

For the reasons stated above, the Parties jointly and respectfully request that this Court grant their Stipulated Motion and continue the discovery related deadlines.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 22nd day of October, 2020.

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DISCOVERY RELATED DEADLINES - 6

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STIPULATED MOTION AND ORDER TO CONTINUE
DISCOVERY RELATED DEADLINES - 7

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STIPULATED MOTION AND ORDER TO CONTINUE
DISCOVERY RELATED DEADLINES - 8

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ORDER

PURSUANT TO THE STIPULATED MOTION, IT IS SO ORDERED.

DATED this 26th day of October, 2020.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by:

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DISCOVERY RELATED DEADLINES - 9

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DISCOVERY RELATED DEADLINES - 10

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STIPULATED MOTION AND ORDER TO CONTINUE
DISCOVERY RELATED DEADLINES - 11

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Certificate of Service

I, Kelsey M. Doyle, certify under penalty of perjury of the laws of the State of Washington that on October 22, 2020, I electronically filed this document entitled STIPULATED MOTION AND [PROPOSED] ORDER TO CONTINUE DISCOVERY RELATED DEADLINES using the CM/ECF system which will send notification of such filing to all attorneys of record.

DATED this 22nd day of October, 2020, at Seattle, Washington.

s/Kelsey M. Doyle

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STIPULATED MOTION AND ORDER TO CONTINUE
DISCOVERY RELATED DEADLINES - 12

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